

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FRANKIE G.

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. N 2006100322

DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Chico, California, on November 17, 2006.

Phyllis J. Raudman, Attorney at Law, represented Far Northern Regional Center (regional center).

Claimant did not appear, nor did anyone appear on his behalf.

PROCEDURAL FINDINGS

1. Claimant is a 43-year-old man, born January 22, 1963, who seeks eligibility for regional center services under a diagnosis of mental retardation and/or the so called “5th category” (a condition closely related to mental retardation requiring services and supports similar to those required by a person with mental retardation).

2. The regional center sent claimant a “Notice of Proposed Action” (Notice) stating that it could not be established that claimant had a developmental disability before age 18, which is required under the definition of “developmental disability” contained in California Code of Regulations, title 17. The Notice further stated that the eligibility review multi-disciplinary team determined claimant was not eligible for regional center services based on a psychological report dated September 18, 2006, authored by Sharon Bolden-

Schleh, L. E. P, and a social assessment dated July 27, 2006, authored by Phyllis Polsan, intake specialist.

3. On September 29, 2006, claimant filed a Fair Hearing Request (Request). The Request stated that the regional center did not “obtain the correct information necessary to obtain claimants documents”, such as school records, and that the regional center “should have pursued this.”

4. The Request set forth claimant’s mailing address as 1000 Columbus Avenue #9, Chico, CA 95926, (Columbus Ave. address). On October 16, 2006, the Office of Administrative Hearings (OAH) served claimant with a Notice of Hearing, at the Columbus Ave. address. The post office returned the mailing to OAH. OAH staff contacted the regional center and was provided claimant’s new address, 831 Rio Chico Ave #A, Chico, CA 95928 (Rio Chico address). On November 6, 2006, OAH re-sent the Notice of Hearing to claimant. On November 16, 2006, OAH staff attempted to contact claimant to confirm his appearance at the hearing. His phone number of record was a facsimile line.

5. On October 25, 2006, the regional center sent claimant a letter at the Rio Chico address, confirming the date and place of the hearing. Subsequently, the regional center served discovery at that address, including a copy of the Notice of Hearing.

6. Claimant was duly served with notice of the time, date, and place of the administrative hearing. Thus, the matter proceeded as a default proceeding.

ISSUE

Is claimant eligible for regional center services due to a developmental disability which originated before he attained age 18?

FACTUAL FINDINGS

Current Assessments

1. On July 27, 2006, Phyllis Polson, intake specialist with the regional center, conducted a social assessment of claimant. She noted that he was unkempt. He was underweight and had a poor appetite. He was a poor historian. He told her that his mother had been an alcoholic and he believed she was ultimately diagnosed with schizophrenia and bi-polar disorder. He has two older sisters, who he has not had contact with in years.

Claimant reported that he took Ritalin as a youngster. He dropped out of school in the 7th grade and attended special education classes until he dropped out. He never obtained a driver’s license or participated in organized sports in school. There was abuse and neglect in his household and he was a troubled child. He has been on his own since he was 15 years

old. Most of his life, he has lived on the streets. He had a “common law” wife of eight years, who took care of him until she died of a heart attack from complications of diabetes. He was hit by an automobile while riding a bicycle.

Claimant reported to Ms. Polson that he attends alcoholics anonymous and narcotics anonymous meetings in addition to his regular appointments with Butte County Behavioral Health. He has a payee for his social security checks. He cannot manage a budget. He needs reminders for personal grooming and hygiene and to take his medications. He cannot make change or use the bus system. He can order simple meals, but cannot cook. He cannot read, write or perform simple math problems. He cannot tell time on an analog clock.

Ms. Polson noted that claimant is on court-ordered probation for car theft and methamphetamine use. She reported that claimant has no vocational goals or interest in obtaining employment, although he has done some roofing, painting, and landscaping maintenance and floor buffing jobs in the past. He stated that he tried to join the army but “could not pass the test.”

2. The regional center referred claimant to a licensed psychologist for a current assessment of intellectual functioning. On September 18, 2006, claimant met with Sharon Bolden-Schleh, licensed educational psychologist. She took a history and conducted intellectual and cognitive testing. She noted that claimant is currently under the care of Dr. Glover, a psychiatrist at the Psychiatric Health Facility in Chico. He was diagnosed with schizophrenia and bipolar disorder. He was taking several medications to control symptoms of schizophrenia, including Zyprexa, Risperdal, Prevacid and Clonidine. He told her that he could not read, he had been in high school until 7th grade and had been in special education. He receives social security disability income and lives in a “clean and sober” house. He reported he is not an alcoholic, but is a “binge drinker” and has been clean and sober for seven months.

3. Ms. Bolden-Schleh administered the Wechsler Adult Intelligence Scale-Third Edition and the Woodcock-Johnson test of achievement- III (WJ-III). On the WAIS-III, claimant received a verbal, performance and full scale IQ in the extremely low range. According to the Woodcock-Johnson III Test of Achievement, claimant’s academic skills are significantly delayed compared to others his chronological age. Ms. Bolden-Schleh prepared a report with these findings and concluded that “His overall scores are similar to those that fall in the range of an individual with mental retardation.” She opined that, “It is important to measure adaptive functioning when determining if an individual is functioning within the mental retardation range.”

Historical Information and Assessments

4. The regional center made efforts to obtain school and medical records and other historical information relating to claimant in order to ascertain whether his disabilities developed before he attained the age of 18. Social Security records obtained by the regional center show claimant was born on January 22, 1963, and applied for social security disability

benefits on January 18, 1989, at the age of 26. His diagnosis was anti-social personality disorder and substance abuse, mixed. He was not considered eligible for disability benefits at that time.

5. Claimant was referred to the Rusk State Hospital for ten months in 1982-1983, when he was 19-20 years old. He was awaiting trial for stealing a car with a friend in Oklahoma, driving to Texas and attempting to hold up two persons at gun point. He had been in jail and had tried to hang himself. His diagnoses were Atypical or Mixed Organic Mental Disorder/Organic Brain Syndrome due to substance abuse, Unspecified Substance Abuse and Borderline Intellectual Functioning. Records contained a WAIS-R Full Scale IQ of 79. The assessment team was asked to determine whether he was mentally retarded and concluded that he was functioning in the borderline range of intellectual functioning. The assessment team noted his history of drug use (he told them he had taken "crystal and Quaaludes" as well as other drugs since he was 14) and his chaotic upbringing with alcoholic parents and foster care. The team concluded that "his adaptation level is high enough so that he could not be classified as mentally retarded." He was found not fit to stand trial due to organic brain syndrome and was committed.

6. Claimant was referred again to the Rusk State Hospital in May of 1984, for an assessment of his psychological competency to stand trial for the two aggravated robbery charges pending against him. The Rusk State Hospital evaluation team concluded that claimant functioned in the borderline range of intellectual abilities. The records state that at the age of 21, claimant had a full scale IQ of 79, read in the dull normal range and had reading comprehension in the dull normal range of intelligence. He functioned in the mildly mentally retarded range for intelligence in spelling and general information. The Minnesota Multiphasic Personality Inventory (MMPI) and the competency to stand trial examination indicated that his understanding of issue was good when he was "given a little more time to understand things." The MMPI showed that claimant was in good contact with reality and was able to adequately interact with the environment and to sustain and defend himself. No serious pathology was present and his thinking was clear and more than adequate to allow him to function in the judicial setting. He displayed an understanding of the charges against him, the seriousness of the charges, his defenses and the chances of probation the penitentiary or a mixture of them. He knew the roles that the persons play in the judicial system and was anxious to cooperate with his attorney. However, claimant's scores on the Bender Gestalt indicated organic dysfunction, no psychotic disturbance, limited capabilities and significant indicators for organic dysfunction.

7. On November 20, 1987, while an inmate in a Texas correctional facility, claimant was referred for a psychological examination due to results of diagnostic screening, which identified him as possibly manifesting signs and symptoms of psychiatric illness. At the time, claimant was 24 years old. He was imprisoned and was engaged in self-mutilating behavior, cutting and burning himself. The report of the clinical psychologist assessing claimant (Diagnostic II Psychological Examination dated November 25, 1987) contains the following information. Claimant reported he had been using marijuana since age 14. He had experimented with barbiturates and amphetamine. Records from Terrell State Hospital

indicted claimant had used multiple drugs including paint, LSD, heroin, cocaine and methamphetamine. He had used inhalants (paint, gasoline and glue) for over a year period at around the age 17 or 18. The Terrell records show that claimant had started “hearing voices” and claimed that he stopped using inhalants because of this. Claimant told the examining psychologist that he continued to experience auditory and visual hallucinations. He heard voices which were “mumbling” and “just weird voices.” He described his visual hallucinations as seeing things like “pots floating through the air.”

8. The psychologist conducting the Diagnostic II Psychological Examination noted that claimant was taking prescription thiorazine. She administered the Wechsler Adult Intelligence Scale-revised, which yielded a verbal score of 75 + or – 5, a borderline classification of intellectual functioning. He was referred for immediate psychiatric services, substance abuse counseling and special education services.

9. The regional center made several attempt to secure information on claimant’s cognitive and adaptive functioning prior to his commitment at Rusk State Hospital. The Marquett Special School (Michigan School System) responded to a regional center request for records with “student not know to us.” Attempts to obtain further medical records from Texas and Michigan were futile. Claimant’s parents have passed away. Regional center staff contacted claimant’s sister who advised that although he had problems in school, he was never considered mentally retarded. The sister attributed claimant’s problems at school to his substance abuse, the transient family lifestyle and mental illness.

10. The regional center assessment team, and Jan Edward Freemon, PhD, staff psychologist at the regional center, concluded that claimant was not eligible for services. They concluded that claimant’s intellectual functioning was within the borderline range, his adaptive functioning was not consistent with the functioning of those with developmental disabilities or mental retardation (for instance, he had had a long term relationship and had held jobs). Moreover, the preponderance of indicators showed that he had lifelong substance abuse and dependency, with abuse of drugs which cause brain damage. The team and Dr. Freemon concluded that claimant showed signs of mental illness at an early age and continues to show signs of mental illness (auditory and visual hallucinations). Finally, the team concluded that even if there was evidence of a developmental disability originating before the age of 18, claimant’s “conditions” which require treatment and services are substance abuse and mental health conditions. Services required by persons with mental retardation or a condition similar to mental retardation are inappropriate for him.

DECISION ON ISSUE

1. Under the Lanterman Developmental Disabilities Act, Welfare and Institutions Code section 4500 et seq., California Code of Regulations, title 17, sections 54000 et seq., any resident of the State of California believed to have a developmental disability is eligible, upon application to the regional center, for initial intake, diagnostic and counseling services, and a determination regarding the need for assessment. Eligibility for ongoing regional

center services is contingent upon the determination, after intake and assessment that the person has a developmental disability with substantial handicap as defined in this article.

2. Welfare and Institutions Code, section 4512, subdivision (a), defines developmental disability as follows:

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

3. There are several regulatory guidelines for assessing whether a claimant suffers from a developmental disability under this section. California Code of Regulations (CCR), title 17, section 54000, provides guidance in determining whether a claimant meets the criteria for eligibility set forth in Welfare and Institutions Code section 4512, subdivision (a). Section 54000 provides in pertinent part:

(a) "Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) *Originate before age eighteen;*

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) *Solely psychiatric disorders* where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. *Such psychiatric disorders include* psycho-social deprivation and/or *psychosis*, severe *neurosis* or *personality disorders* even where social and

intellectual functioning have become seriously impaired as an integral manifestation of the disorder. (emphasis added)

4. The Lanterman Act defines “substantial disability” as follows:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person: (1) Self-care. (2) Receptive and expressive language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living. (7) Economic self-sufficiency.¹

5. Claimant bears the burden of proof in establishing by a preponderance of evidence that he is eligible for the services of the regional center. As set forth in the Factual Findings, claimant has not proven that he has a developmental disability as defined by the Lanterman Act. The evidence is not persuasive that claimant had, prior to the age of 18, mental retardation or a condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation. Nor is there evidence that his condition, prior to his 18th birthday, constitutes a substantial disability. The evidence indicates that claimant’s condition is psychiatric in origin. His psychiatric condition has been exacerbated by significant drug abuse prior to his 18th birthday and over the ensuing 25 years.

ORDER

Claimant’s request for an order directing the Far Northern Regional Center to provide services to him is denied.

Date:

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

¹ Welf. & Inst. Code, § 4512, subd. (1).

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.